

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S  
APPENDIX**





76-7132

Index No. 75-C-1435

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

B

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RICHARD PITMAN,

Plaintiff-Appellant,

against

EASTERN AIR LINES, INC.,

Defendant-Appellee.

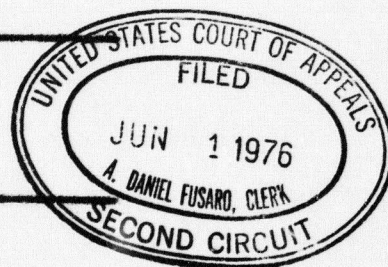
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APPEAL FROM UNITED STATES DISTRICT COURT,  
SOUTHERN DISTRICT OF NEW YORK

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APPENDIX

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BERNARD S. ROGOVIN

ATTORNEY AT LAW

100 Merrick Road

Rockville Centre, New York 11570

516 - 536-3344

Attorney for Plaintiff-Appellant

PAGINATION AS IN ORIGINAL COPY



APPENDIX

List of parts of the record contained

|   | Page |
|---|------|
| Relevant docket entries                                     | A2   |
| Relevant portions of transcript (pg. 92 and 93)             | A5   |
| Relevant portion of contract (pg 70)                        | A7   |
| Relevant portion of contract (pg 98)                        | A8   |
| Memorandum and order Judge Constantino<br>February 9, 1976  | A9   |
| Memorandum and order of Judge Constantino<br>March 11, 1976 | A12  |
| Notice of appeal  | A14  |



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

|                          |   |                  |
|--------------------------|---|------------------|
| RICHARD PITTMAN,         | x |                  |
|                          | : |                  |
| Plaintiff,               | : | Civil Action No. |
| v.                       | : | 75 C 1435.       |
|                          | : |                  |
| EASTERN AIR LINES, INC., | : |                  |
|                          | : |                  |
| Defendant,               | : |                  |
|                          | x |                  |

INDEX ON APPEAL

|   |             |
|---|-------------|
| Certified Copy of Papers  | A & B       |
| Complaint filed. Summons issued.  | 1           |
| Summons returned and filed/ executed.   | 2           |
| By COSTANTINO, J. -Order to show cause dated 9-2-75 why an order should not be entered setting aside the award and decision made pursuant to the hearing held on 7-17-75 at the International Air Port filed. Order to show cause ret 9-16-75. Affidavit of service re O/S/C and summons on back. |             |
| <del>XXXXXX</del> By Costantino, J.- Order to show cause, etc.  | 3 (missing) |
| ANSWER of Eastern Airlines filed. (mg)  | 4           |
| Notice of Motion, ret. Oct. 7, 1975 filed re: for summary judgment, etc.  | 5           |
| Before COSTANTINO, J. -Case called - Motion for summary judgment in favor of Pltff's motion argued - Decision reserved.   |             |
| Notice of Motion, ret. 9/29/75 filed re: for summary judgment, etc.   | 6           |
| Brief in Support of Setting Aside Award Decision of Arbitrator filed  | 7           |
| Letter dated 10/1/75 filed from R. Magurno to Clerk   | 8           |

Record on appeal certified and sent to the Court of Appeals  
April 16, 1976.

A2



Eastern Airline's reply memorandum in support of its motion for summary judgment filed. (mg)

9.

Supplemental Affidavit of J. Sickles dated 10/10/75 filed.

10

Affidavit of Bernard S. Rogovin filed. (mg)

11

Defendant's reply to plaintiff's counsel's statement filed.

12

By COSTANTINO, J. - Memorandum & Order dated 12-1-75 denying plaintiff and defendant's motions for summary judgment filed. (mg)

13

By COSTANTINO, J. - Memorandum and Order dated 12-8-75 vacating the Memorandum & Order dated 12-1-75. The parties are directed to contact the Judge's chambers to set a date for a hearing filed. (p/c).

14

~~XXXXXX~~ Copy of lttr dtd 12-18-75 to Bernard S. Rogovin from Richard P. Magurno filed.

15(missing)

Before COSTANTINO, J. - Case called - Hearing ordered and begun - Counsel present - Adjourned to 2/5/76 to resume civil hearing

Before COSTANTINO, J. - Case called. Civil hearing held and concluded. Decision reserved.

By COSTANTINO, J. - Memorandum & Order dated 2-9-76 denying the petition to set aside the arbitration award is dismissed. Copies mailed from Chambers.

16

Judgment that the petitioner take nothing of the respondent and that the petition is dismissed filed.

17

Notice of motion returnable 2-26-76 for setting aside memo and order dated 2-9-76 filed.

18\*\*exhibits affixed

Response of Eastern Airlines to plaintiff's motion to set aside Order filed.

19

Before COSTANTINO, J. - Case called. Defendants motion to set aside order dated 2-9-76 submitted. Decision reserved.

Notice of appeal filed. Copy mailed to C of A.

20



By COSTANTINO, J. - Memo and Order dated  
3-11-76 denying motion for reconsideration  
filed.

21

Letter of Richard P. Magurno dated 3-23-76  
filed re: appellant's belief that transcripts  
are not necessary for appeal record.

22

Copy of letter mailed to C of A  
Civil appeal scheduling order filed. (3-26-76)

23

Civil appeal scheduling order filed.

24

Ltr from Bernard Rogovin requesting exhibit inclusion

25

Clerk's Certificate

26

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**EXHIBITS** (as they appear after 18)

XXX

1. Copy of Article 13 (duration of agreement).
2. Ramati v. Blue Cross (Law Journal Citation).
3. 2/10/76 Letter to Court.
4. Letter from AAA to Bernard S. Rogovin re Milford dated 2/4/76.
5. Copy of Minutes of Arbitration showing record closed.

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Plaintiff's Exhibit No. 1 - Letter to Mr. Andrews

XX

Plaintiff's Exhibit No. 2 - Certified copy of  
mailing.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

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1  
2 right now. I say his life because his reputation is  
3 in jeopardy. And to allow them to pursue this in  
4 the manner that they have done is against all the  
5 weight of evidence.

6 Every bit of evidence that's been submitted has  
7 been hearsay, circumstantial to the slightest degree.  
8 There has been no showing that he took those cans and  
9 he secreted them. The only testimony has been that  
10 of Mr. Conlon.

11 And then we have got two huge cans, 110 pounds  
12 a piece, that he easily lifted up at one time and  
13 carried about 10 or 15 feet and put it in the mail  
14 cart.

15 Now how incredible is that?

16 I think I should end on that.

17 THE CHAIRMAN: Mr. Smith, do you have some  
18 comment?

19 MR. SMITH: Yes.

20 I believe the record will show that Mr. Bugeia,  
21 the air freight runner, testified that the aircraft  
22 was being loaded when he arrived, not unloaded.

23 MR. ROGOVIN: I agree, it was being loaded.

24 THE CHAIRMAN: The record will speak for itself.

25 Does either side have any further evidence or



testimony that they desire to put on the record?

Not hearing anything, I will declare the record closed in Matter No. 365-75.

(Whereupon, the hearing was concluded at 1:10 p.m.)



#### Article 19

submission in accordance with Paragraph (G) above, the Company member of the Board and the Union member of the Board shall select the neutral member to sit with the Board in the consideration and disposition of the case. If the Board members cannot agree upon the neutral member or a method for selecting him, they shall select him by alternately striking names from the panel of eight (8) referees. The order of striking shall be determined by lot for the first case in which a neutral member is chosen under the provisions hereof and in subsequent cases, the parties shall alternate, taking the first strike. The Secretary will immediately contact the selected neutral to determine his availability and will advise the other Board member in regard thereto and they shall agree upon a date for the hearing. If the neutral member selected for the particular case is unable to serve within thirty (30) days after his selection, the Board members shall select another neutral member for that case by the method above provided. The Secretary shall give the necessary notices of such meeting, time and place in writing to the Board members and to the parties to the dispute. The neutral member shall serve as Chairman of the Board and shall preside at meetings and hearings. It shall be the responsibility of the Chairman to guide the parties in the presentation of testimony, exhibits and arguments to the end that a fair, prompt and orderly hearing of the dispute is afforded.

The decision of the Board shall be rendered within ten (10) days after the close of the hearing. The time limits specified in this section may be extended by mutual agreement of the Board members.

(I) Employees covered by this Agreement may be represented at Board hearings by such person or

#### Article

persons as may be chosen by the certified bargaining agent, and the Company may be represented by such person or persons as it may choose and designate. Evidence may be presented either orally, or in writing, or both. On request of individual members of the Board, the Board may, by majority vote, or at the request of either the Union member or Company member thereon, summon any witnesses who are employed by the Company and who may be deemed necessary by the parties to the dispute, by either party, or by the Board itself.

The number of witnesses summoned at any time shall not be greater than the number which may be spared from the operation without interference with the services of the Company.

(J) A majority vote of all members of the Board shall be competent to make a decision.

(K) Decisions of the Board in all cases proper and referable to it shall be final and binding upon the parties to the dispute and the parties hereto.

(L) Nothing herein shall be construed to limit, restrict or abridge the rights or privileges accorded either to the employee or the employer or their duly accredited representatives, under the provisions of the Railway Labor Act, as amended, and failure to decide a dispute under the procedures established herein shall not therefore, serve to foreclose subsequent rights which such law may afford. The Board by orders issued under such law with respect to disputes which are not decided under the procedures herein established.



Article 29-30

### ARTICLE 29 — SAVING CLAUSE

(A) Should any part or provision of this agreement be invalid for any reason, such invalidation of any part or provision of this agreement shall not invalidate the remaining portions thereof, and they shall remain in full force and effect.

(B) In the event that the increase in pay rates effective September 1, 1973 is disallowed by the Cost of Living Council, the parties will promptly meet to negotiate to conclude an agreement consistent with such action.

(C) The resultant provisions as approved in accordance with Section B above, and the remaining portions of the agreement referred to in Section A above, together shall constitute the complete agreement between the parties.

### ARTICLE 30 — DURATION OF AGREEMENT

Except where other effective dates have been agreed upon for certain specified provisions, this agreement shall become effective upon receipt of written notice of union ratification. Where effective dates are specified, such effective date shall be considered as the first day of the first payroll period commencing after such effective date, except for the increase in pay rates in Schedule "A", effective November 1, 1975.

This entire agreement shall continue in full force and effect through December 31, 1975 and thereafter shall be subject to change as provided for in Section 6, Title I of the Railway Labor Act, as amended. Either party requesting renegotiation of all or any part of this agreement shall serve notice on the other party at least sixty (60) days prior to December 31, 1975.

IN WITNESS WHEREOF  
unto affixed their signatures this

FOR EASTERN AIR LINES,

/s/ John P. Mead  
Staff Vice President  
Industrial Relations

/s/ D. C. Andrews  
Director, Labor Relations

FOR INTERNATIONAL ASSOCIATION OF  
MACHINISTS & AEROSPACE

/s/ J. G. Cates  
President & General Chairman  
District 100



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
RICHARD PITTMAN,

Plaintiff,

v.

EASTERN AIRLINES, INC.,

Defendant.  
-----x

75-C-1435

MEMORANDUM and ORDER

**FEB 9 1976**

COSTANTINO, D.J.

Petitioner Richard Pittman seeks to set aside an arbitration award sustaining his discharge by his former employer, defendant Eastern Airlines, Inc. (Eastern). Defendant moves pursuant to Rule 56, Fed.R.Civ.P. for summary judgment. Plaintiff was discharged when Eastern became convinced that he had misappropriated property entrusted to Eastern. Pursuant to the collective bargaining agreement between Eastern and petitioner's union, the International Association of Machinists and Aerospace Workers (IAMAW) District #100, petitioner filed with Eastern an appeal from the decision to discharge him. When the union proved unsuccessful in its efforts to have Eastern rescind the discharge, the union notified the Eastern-IAMAW System



Board of Adjustment (Board) that it wished to arbitrate the question "Was Eastern Airlines, Inc. justified in terminating the employment of Mr. Richard Pittman?" A three member Board was convened consisting of representatives of the union and Eastern, plus a "Neutral Member" named Joseph Sickles. The Board, by majority vote, sustained the discharge in its award.


Petitioner contends that the award should be set aside because it was not rendered within ten days of the close of the hearing in alleged violation of Article 19H of the collective bargaining agreement between the union local and Eastern dated July 11, 1974. Article 19H provides in relevant part that "the decision of the Board shall be rendered within ten days after the close of the hearing." A letter dated February 3, 1975 from F.P. Coughlan, Vice President of the petitioner's union local, to Mr. Sickles and the other Board arbitrators made two important points with respect to this issue. First, the date of receipt of the last document is to be regarded as the date of the close of the hearing. Second, the transcript of the Board hearing may be the last document (the letter states, "I have explained to my people the delaying actions [sic]



caused by awaiting transcripts . . ."). These points conform with Eastern's understanding of Article 19H.

The last document in the proceeding, the transcript of the Board proceeding, was not available to the neutral Board member, Mr. Sickles, until August 11 or August 12, 1975. Thus, the hearing was not closed until August 11 or 12. Sickles sustained the discharge in his award; copies of Sickles's award were sent by him to the Eastern and union members of the Board on August 15, 1975. The award was signed on August 20, 1975 by the Eastern member of the Board, Mr. George A. Martin. In view of the statement in Article 9J of the collective bargaining agreement that a "majority vote of all members of the Board shall be competent to make a decision," the signing by Mr. Martin on August 20 constituted the rendering of a decision by the Board within ten days of the close of the hearing. Petitioner's contention that the Board's award must be set aside because it was not rendered within ten days of the close of the hearing is without merit. Accordingly, the petition to set aside the arbitration award is dismissed.

So ordered.

  
U. S. D. J.



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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
RICHARD PITTMAN,

Plaintiff,

75-C-1435

v.

MEMORANDUM AND ORDER

EASTERN AIR LINES, INC.,

Defendant.

MAR 11 1976

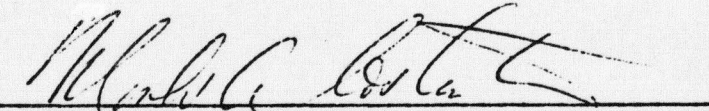
-----X  
COSTANTINO, D.J.

This is a motion for reconsideration of this court's Memorandum and Order dated February 9, 1976. Petitioner's counsel contends that the arbitration award should be set aside because the award was not rendered within ten days of the close of the arbitration session. This claim is based on Article 19H of the collective bargaining agreement between management and petitioner's union which provides "the decision of the board shall be rendered within ten days after the close of the hearing." The rule is that a "contract must be interpreted in light of what the record reveals about the practices of the business in which the parties were engaged, and especially what it reveals about the general understanding and course of

dealings between them." Arnold Productions, Inc. v.

Favorite Films Corp., 298 F.2d 540, 543 (2d Cir. 1962).

A letter from the Vice President of petitioner's union local to the board of arbitrators dated February 3 makes clear the union's understanding of the time limitation. The letter stated "I know it is impossible to grant a decision without the necessary documents, but my people have requested me to seek your assistance and if at all possible, to render your decision within ten (10) days of receiving the 'last document.'" The letter also implied that the transcript of the arbitration hearing could be the last document: "I have explained to my people the delaying actions caused by awaiting transcripts. . . . They agree with me and understand these factors. . . ." The union's interpretation of 19H coincides with that of management and the arbitrators (Affidavits of Joseph A. Sickles and Dwain C. Andrews dated September 22, 1975). Accordingly, Article 19H was complied with here since a decision was rendered within ten days from Mr. Sickles's receipt of the transcript of the hearing. Accordingly, the motion for reconsideration is denied.

  
U. S. D. J.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
RICHARD PITTMAN,

Plaintiff,

75-C-1435

v.

EASTERN AIRLINES, INC.,

NOTICE OF APPEAL

Defendant.  
-----X

NOTICE IS HEREBY GIVEN that RICHARD PITTMAN, plaintiff, hereby appeals to the United States Court of Appeals for the Second Circuit from the Memorandum and Order entered in this proceeding on the 9th day of February 1976, dated Rockville Centre, New York.

Dated: March 5, 1976

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A14